

BEFORE THE MOTOR ACCIDENT CLAIMS TRIBUNAL (MAIN)
KHEDA AT NADIAD.

Order Below Ex.5 In M.A.C.P. No. 156/2019

1. This application has been filed by the claimants u/S.140 of the Motor Vehicles Act, 1988, under the principles of No Fault Liability for the compensation of Rs.50,000/- (Rupees Fifty Thousand Only) for the fatal injuries sustained by the victim in the vehicular accident, occurred by the vehicle involved in this case, resulted into the death of the victim.
2. The opponents are duly served with the notices.
3. Heard the learned advocates for the parties, read the application and perused the documents produced on record.
4. Looking to the documents produced by the claimants' side, prima-facie, it has been proved that, the accident has been occurred involving the vehicle, and the victim mentioned in the claim petition, sustained fatal injuries due to the vehicular accident, resulted into the death of the victim, and coverage of Insurance Policy at the relevant time of the accident.
5. I have considered First Appeal No.3237/2005 of Hon'ble High Court of Gujarat (DB) in the case of New India Assurance Co. Ltd. v. Maniben Vaghabhai & 6. In this citation, Hon'ble High Court has considered the following citations.

1. AIR 1997 Gujarat 60 Hon'ble Gujarat High Court in the case of Munshiram D. Anand v. Pravinsinh Prabhatsinh Anand Society Gedh, Jamnagar.
2. 1999 ACJ 268 Hon'ble Guajrat High Court in the case of Unietd India Insurance Co. Ltd. v. Maganlal Hirabhai Patel and others.
3. 1995(2) GLR 1111 Hon'ble Gujarat High Court in the case of New India Assurance Co. Ltd., Ahmedabad v. Mithakhan Dinakhan Notiyar and ors.
4. 1998(2) GLR 1199 Hon'ble Gujarat High Court in the case of Mahendrakumar Kalyanjibhai v. Haresh Bipinchandra Pathak and anr.
5. 2006(2) GLH 106 Hon'ble Gujarat High Court in the case of United India Insurance Co. Ltd. v. Kadviben Udabhai Rathwa and Anr.
6. AIR 2007 Supreme Court 2582 in the case of Yallwwa and ors. v. National Insurance Co. Ltd. and anr.
7. 2012(2) GLH 465 Hon'ble Gujarat High Court in the case of United India Insurance Co. Ltd. v. Sidikbhai Ukabhai Solanki and anr.
8. AIR 2013 Supreme Court 3099 in the case of Ramji Gupta and Anr. v. Gopi Krishan Agrawal(D) and ors.
9. AIR 2014 Supreme Court 544 in the case of Erach Boman Khavar v. Tukaram Sridhar Bhat and another.
10. AIR 2000 Supreme Court 1238 in the case of Sajjadanashin Sayed MD. B.E. Edr (D) by L.Rs. v. Musa Dadabhai Ummer and others.

11. JT 2014 (4) SC 143 Hon'ble Supreme Court in the case of Shiv Chander More v. Lieutenant Governor.
12. AIR 2008 Supreme Court 1272 in the case of Barkat Ali v. Badri Narain(D) by Lrs.
13. F. A. No.133 of 2006 with C. A. 527 of 2006 Hon'ble Supreme Court Division Bench in the case of New India Assurance Co. Ltd. v. Babubhai Purshottambhai Harijan and others.
14. AIR 1991 Supreme Court 1769 in the case of Shivaji Dayanu Patil and another v. Smt. Vatschala Uttam More.
15. AIR 2010 Supreme Court 2907 in the case of Eshwarappa alias Maheshwarappa and anr. v. C. S. Gurushanthappa and anr.
16. 1998(2) GLH 916 Hon'ble Supreme Court in the case of National Insurance Co. Ltd. v. Jethu Ram & Ors.

At last, in para-38 Hon'ble High Court has summarized as under:~

"38. In the context of questions referred, we summarize our answers as under:

- i. At the stage of proceedings under section 140 of the M. V. Act, the Claims Tribunal has to verify only following three aspects :*
 - a) the accident has arisen out of use of motor vehicle.*
 - b) the said accident resulted in permanent disablement of a person filing the claim or in case of death his legal representatives.*
 - c) the claim is made against the owner and the insurer of the motor vehicle involved in the accident.*

- ii. *If the insurance company has raised dispute with any of these aspects, the Claims Tribunal would give its findings through a summary inquiry.*
- iii. *If the insurance company has not raised any dispute with respect to any of these aspects or if raised, is decided.*
- iv. *against the insurance company by the Claims Tribunal, the same would bind the insurance company at the later stage of deciding the Claim Petition under section 166 of the M. V. Act.*
- v. *No other defences including those referred to in section 149(2) of the M. V. Act would be available to the insurance company at the stage of application under section 140 of the M. V. Act. It would therefore, not be necessary, in fact, not permissible for the insurance company to raise such defences at this stage and if raised the Tribunal shall not decide the same at that stage. There would therefore, be no question of any res judicata with respect to such issues at the stage when the Claims Tribunal proceeds to decide the Claim Petition under section 166 of the M. V. Act".*

In view of the above mentioned citation of Hon'ble High Court of Gujarat, the claimants are entitled to get the compensation under the principles of "No Fault Liability".

6. So, considering the above mentioned facts and circumstances, the decision of Hon'ble High Court of Gujarat (Division Bench), I come to the conclusion that the claimants are entitled for the compensation of Rs.50,000/- (Rupees Fifty Thousand Only) under the principles of No Fault Liability u/s.140 of the M. V. Act, 1988, jointly and severally

from the opponents. Hence, I pass the following order in the interest of justice.

ORDER

1. The application filed u/s.140 of the Motor Vehicles Act, 1988 is allowed.
2. The opponents are hereby ordered to pay the compensation of Rs.50,000/- (Rupees Fifty Thousand Only) u/s.140 of the M. V. Act, 1988 under the principles of No Fault Liability to the claimants jointly and severally, together with 9% p.a. interest thereon from the date of the application till realization, within one month from the date of this order.
3. Pronounced in the open Court.

Date : 26-02-2021.

Nadiad.

(Liyakathussain Shamsuddin Pirzada)

Chairman –M.A.C.T.(Main),

Kheda at Nadiad.

GJ00914